LEGISLATIVE NOTES AND REVIEWS

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Law Reform—New York. The purpose of this note is to give an outline of law reform in New York down to the presentation of the report of the statutory consolidation board recommending the repeal of the code of civil procedure and the substitution in lieu thereof of a civil practice act and rules.

Prior to 1909 there had been several reports of committees of the legislature, of the New York State Bar Association and the Association of the Bar of the City of New York, recommending either practice acts and rules, or simplification of the civil procedure on the lines of the English judicature act, in lieu of the code of civil procedure; but none of these committees was able to pass a single important bill, although some of them did prevent the passage of very many bad procedural bills promoted by persons with axes to grind. In 1909 the New York City Bar Association appointed a special committee to consider the simplification of the New York procedure. Cipriano Andrade, the introducer of the resolution (now a member of the New York State Bar Association committee to examine the practice act prepared by the board of statutory consolidation), was its first chairman. In 1911 it became the City Bar Association's standing committee on law reform, whose first chairman was Everett P. Wheeler, then and now the chairman of the American Bar Association committee to suggest remedies, etc. Its present chairman is George Gordon Battle. In civil procedural matters from 1910 to date it has at all times coöperated (in a sort of informal alliance) with the law reform committee of the New York State Bar Association, whose chairman from 1910 to 1914 was A. T. Clearwater, now president of that association.

This year Judge Clearwater was succeeded as chairman by Henry W. Taft. In every year since 1909 these committees have procured the passage of bills or the promulgation of court rules abating major archaisms of the civil procedure, or else have inspired state commissions to prepare bills which have passed abating procedural archaisms in such directions as a revision of the surrogates law (1914) and a New York

City municipal court act (1915). The Massachusetts Bar Association (in alliance with the Boston Bar Association) and the New Jersey State Bar Association have successfully followed New York's example.

The New York City Bar Association committee on the simplification of the procedure published a preliminary report in the summer of 1909, and presented its final report (with 52 recommendations of which the association adopted 43) in December, 1909. In January, 1910, the joint bar association campaign began to procure their legislative enactment or promulgation as rules of court, and was continued until the presentation of the statutory consolidation board's report recommending a practice act, rules and forms in 1915.

In 1910 the legislature passed seven of the joint city and state bar association bills. Of these the (1) bill giving the surrogates courts statutory equity jurisdiction on accountings (2) the bill authorizing jury trial in the supreme court in the first instance in every surrogates proceeding where a constitutional right to trial by jury existed thereby abolishing statutory double trials in probate matters and (3) the bill shortening to three extra days the double time formerly allowed after the service of a pleading or other paper by mail, became laws. Bills (1) abolishing the statutory double trial and discretionary third trial in ejectment (2) authorizing the clerk of every court of record to draw and enter short form judgments whenever possible in lieu of long form judgments with unnecessary recitals which had to be drawn by the attorney (3) providing a local flat filing system in each county of New York City and (4) providing a local (but not necessarily flat) filing system for each county in the State, also requiring that the opinion of the appellate division should for the purpose of an appeal to the court of appeals be deemed a part of the record, were all vetoed. In the fall of 1910 the supreme court justices promulgated as a general rule of practice a part of the committee's recommendation that opinions should be deemed a part of the record on appeal, also the recommendation for a general compulsory exchange of contested motion papers when moving papers were served ten days before the return day of a motion, also the recommendation for a proper index of and headnoting each page of a case on appeal or appeal papers. In October, 1910, the county clerk of New York County voluntarily adopted a local flat filing system, which was soon made compulsory by a local rule promulgated by the appellate division.

In 1911 the joint bar association campaign continued. Double trials in ejectment were abolished by statute and a statutory flat filing

system for New York County was introduced, overcoming two of the vetoes of 1910. A short form order bill authorizing the court to enter its own orders on a short printed form or endorsement on the motion papers in lieu of entering long form orders after notice of settlement was enacted. Judicial decisions abated a procedural evil in relation to demurrers. Omnibus motions for general, alternative, or inconsistent relief were introduced; the abuses relating to the common law lack of jurisdiction of suits by or against a foreign executor were abolished, and in criminal cases the testimony was required to be printed in question and answer in lieu of the narrative form.

In 1912 a bill was enacted doing away with Baron Parke's harmless error doctrine of 1835 as a ground for granting a new trial as matter of right in all jury cases (and even in many equity cases), reëstablishing the equity practice of one trial of the facts and one course of appeal in all equity suits and so far as it could constitutionally be done in jury cases. (In the fall of 1813 a rule of practice was promulgated requiring the case on appeal on a question of fact to be in haec verba, or question and answer, in lieu of the former narrative form. In April 1914, the court of appeals adopted this rule in capital cases.) Some local archaisms in regard to the form of orders of reversal were abolished in 1912 and the statutory consolidation board was authorized to report a plan for the classification, consolidation and simplification of the civil practice.

In 1913 a bill making the opinion of the appellate division a part of the record on appeals was enacted, overcoming the major part of the third of the vetoes of 1910. A number of local procedural abuses were abated. The time of the statutory consolidation board to report was extended, and it was authorized to prepare and present to the legislature a practice act, rules of court and short forms for pleadings and other legal papers used in litigation, to simplify and expedite the present civil procedure so as to provide so far as practicable for one form of action, one trial of the facts and one course of appeal.

In 1914 and 1915 owing to the forthcoming report of the statutory consolidation board, the civil procedural changes enacted or promulgated were generally of but local or state interest. In 1914 a revision of the surrogates law was enacted through the efforts of a state commission composed of representative surrogates.

In 1915 a modern and efficient municipal court act for New York City was enacted through the efforts of a state commission composed in part of leading municipal court justices. An act abolishing many

of the abuses of expert witnesses in criminal cases or in habeas corpus proceedings by providing for the appointment of disinterested insanity experts (Laws 1915, Chap. 295), was passed through the persistence and activity of a committee headed by President Clearwater of the State Bar Association.

In 1915 the Association of the Bar of the City of New York approved the unanimous report of its law reform committee for the reform of the criminal procedure on the lines suggested by the decisions of the supreme court of the United States and the modern English and federal criminal practice. During 1914–1915, the law reform committee of the City Bar Association made a nation-wide investigation of the public defender project and reported against it.

As these lines are written, the complete report of the statutory consolidation board recommending a short practice act and court rules in lieu of the code of civil procedure, is at hand. The writer trusts it will be enacted next year.

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Legislation of 1914 Affecting Nominations and Elections. The small amount of statute making in the few States whose legislatures were in session in 1914 indicates no new tendencies in nomination and election practices. Most of the legislation is concerned with modifications of the direct primary. At the same time the marked tendency toward the "short ballot" noticed last year continues, and "corrupt practices" laws increase in favor. Some of the more specific changes may be considered as follows:

Equal suffrage. Suffrage qualifications furnish the starting point in considering election laws. In this respect the movement for woman suffrage made decided gains during the year. Montana and Nevada adopted constitutional amendments admitting women to the electorate; while the Massachusetts (Laws 1914, p. 1055) legislature passed resolutions to submit like amendments to the voters in the respective States in 1915, after the legislatures of 1915 have ratified the proposals. New York, in changes in the charters of the cities of Jamestown (Laws 1914, p. 785) and Norwich (Laws 1914, p. 87), provides that women who pay taxes may vote in all elections, in those cities, in which only tax payers participate. The tendency toward equal political rights for women is further illustrated by the amendment to the Louisiana constitution (Laws 1914, p. 251), which makes women eligible to hold office